BEFORE THE
MEDICAL BOARD OF CALIFORNIA
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

In the Matter of the Accusation and Petition to Revoke Probation Against:	)	
STEPHEN BARNETT LEWIS, M.D.	)	**Case No. 800-2015-014241**
Physician's and Surgeon's Certificate No. G20175	)	
Respondent	)	

DECISION

The attached Stipulated Surrender of License and Order is hereby adopted as the Decision and Order of the Medical Board of California, Department of Consumer Affairs, State of California.

This Decision shall become effective at 5:00 p.m. on March 31, 2018 **.**

IT IS SO ORDERED January 9, 2018 **.**

MEDICAL BOARD OF CALIFORNIA

By: _____
Kimberly Kirchmeyer
Executive Director

XAVIER BECERRA
Attorney General of California
JANE ZACK SIMON
Supervising Deputy Attorney General
MACHAELA M. MINGARDI
Deputy Attorney General
State Bar No. 194400
455 Golden Gate Avenue, Suite 11000
San Francisco, CA 94102-7004
Telephone: (415) 703-5696
Facsimile: (415) 703-5480
Attorneys for Complainant

BEFORE THE
MEDICAL BOARD OF CALIFORNIA
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

In the Matter of the Accusation/Petition to Revoke Probation Against: **STEPHEN BARNETT LEWIS, M.D.** **2425 East Street #15** **Concord, CA 94520-1926** Physician's and Surgeon's Certificate No. G20175 Respondent.	Case Nos. 800-2015-014241 & 800-2014-010514 OAH Nos. 2017100054 & 2017100098 **STIPULATED SURRENDER OF LICENSE AND ORDER**

IT IS HEREBY STIPULATED AND AGREED by and between the parties to the above-entitled proceedings that the following matters are true:

PARTIES

1. Kimberly Kirchmeyer (Complainant) is the Executive Director of the Medical Board of California (Board). She brought this action solely in her official capacity and is represented in this matter by Xavier Becerra, Attorney General of the State of California, by Machaela M. Mingardi, Deputy Attorney General.

2. Stephen Barnett Lewis, M.D. (Respondent) is represented in this proceeding by attorney David A. Depolo, Esq., whose address is 201 North Civic Drive, Ste. 239 Walnut Creek, CA 94596.

3. On or about April 7, 1971, the Board issued Physician's and Surgeon's Certificate No. G20175 to Stephen Barnett Lewis, M.D. (Respondent). The Physician's and Surgeon's Certificate was in full force and effect at all times relevant to the charges brought in Accusation/Petition to Revoke Probation No. 800-2015-014241 and will expire on March 31, 2018, unless renewed.

JURISDICTION

4. Accusation/Petition to Revoke Probation No. 800-2015-014241 was filed before the (Board), and is currently pending against Respondent. The Accusation/Petition to Revoke Probation and all other statutorily required documents were properly served on Respondent on December 7, 2016. Respondent timely filed his Notice of Defense contesting the Accusation/Petition to Revoke Probation. A copy of Accusation/Petition to Revoke Probation No. 800-2015-014241 is attached as Exhibit A and incorporated by reference.

ADVISEMENT AND WAIVERS

5. Respondent has carefully read, fully discussed with counsel, and understands the charges and allegations in Accusation/Petition to Revoke Probation No. 800-2015-014241. Respondent also has carefully read, fully discussed with counsel, and understands the effects of this Stipulated Surrender of License and Order.

6. Respondent is fully aware of his legal rights in this matter, including the right to a hearing on the charges and allegations in the Accusation/Petition to Revoke Probation; the right to confront and cross-examine the witnesses against him; the right to present evidence and to testify on his own behalf; the right to the issuance of subpoenas to compel the attendance of witnesses and the production of documents; the right to reconsideration and court review of an adverse decision; and all other rights accorded by the California Administrative Procedure Act and other applicable laws.

7. Respondent voluntarily, knowingly, and intelligently waives and gives up each and every right set forth above.

//

//

//

CULPABILITY

8. Respondent understands that the charges and allegations in Accusation/Petition to Revoke Probation No. 800-2015-014241, if proven at a hearing, would constitute cause for imposing discipline upon his Physician's and Surgeon's Certificate.

9. For the purpose of resolving the Accusation/Petition to Revoke Probation without the expense and uncertainty of further proceedings, Respondent agrees that, at a hearing, Complainant could establish a factual basis for the Accusation/Petition to Revoke Probation and that those charges constitute cause for discipline. Respondent hereby gives up his right to contest that cause for discipline exists based on those charges.

10. Respondent understands that by signing this Stipulation he enables the Board to issue an order accepting the surrender of his Physician's and Surgeon's Certificate without further process.

CONTINGENCY

11. This Stipulation shall be subject to approval by the Board. Respondent understands and agrees that counsel for Complainant and the staff of the Board may communicate directly with the Board regarding this Stipulation and surrender, without notice to or participation by Respondent or his counsel. By signing the Stipulation, Respondent understands and agrees that he may not withdraw his agreement or seek to rescind the Stipulation prior to the time the Board considers and acts upon it. If the Board fails to adopt this Stipulation as its Decision and Order, the Stipulated Surrender and Disciplinary Order shall be of no force or effect, except for this paragraph, it shall be inadmissible in any legal action between the parties, and the Board shall not be disqualified from further action by having considered this matter.

12. The parties understand and agree that Portable Document Format (PDF) and facsimile copies of this Stipulated Surrender of License and Order, including Portable Document Format (PDF) and facsimile signatures thereto, shall have the same force and effect as the originals.

13. In consideration of the foregoing admissions and stipulations, the parties agree that the Board may, without further notice or formal proceeding, issue and enter the following Order:

//

ORDER

IT IS HEREBY ORDERED that Physician's and Surgeon's Certificate No. G20175, issued to Respondent Stephen Barnett Lewis, M.D., is surrendered and accepted by the Medical Board of California.

1. The surrender of Respondent's Physician's and Surgeon's Certificate and the acceptance of the surrendered license by the Board shall constitute a record of discipline and shall become a part of Respondent's license history with the Medical Board of California.

2. Respondent shall lose all rights and privileges as a Physician and Surgeon in California as of the effective date of the Board's Decision and Order.

3. Respondent shall cause to be delivered to the Board his pocket license and, if one was issued, his wall certificate on or before the effective date of the Decision and Order.

4. If Respondent ever files an application for licensure or a petition for reinstatement in the State of California, the Board shall treat it as a petition for reinstatement. Respondent must comply with all the laws, regulations and procedures for reinstatement of a revoked license in effect at the time the petition is filed, and all of the charges and allegations contained in Accusation No. 800-2015-014241 shall be deemed to be true, correct and admitted by Respondent when the Board determines whether to grant or deny the petition.

5. If Respondent should ever apply or reapply for a new license or certification, or petition for reinstatement of a license, by any other health care licensing agency in the State of California, all of the charges and allegations contained in Accusation/Petition to Revoke Probation, No. 800-2015-014241 shall be deemed to be true, correct, and admitted by Respondent for the purpose of any Statement of Issues or any other proceeding seeking to deny or restrict licensure.

6. This Stipulated Surrender will be effective at 5:00 p.m. on March 31, 2018. As a condition of this Stipulated Surrender, Respondent agrees that, as of 5:00 p.m. on January 15, 2018, he will be prohibited from ordering, prescribing, dispensing, administering, furnishing, or possessing any controlled substance as defined in the California Uniform Controlled Substances Act.

ACCEPTANCE

I have carefully read the above Stipulated Surrender of License and Order and have fully discussed it with my attorney, David A. Depolo, Esq. I understand the Stipulation and the effect it will have on my Physician's and Surgeon's Certificate. I enter into this Stipulated Surrender of License and Order voluntarily, knowingly, and intelligently, and agree to be bound by the Decision and Order of the Medical Board of California.

DATED: 5 December 2017

STEPHEN BARNETT LEWIS, M.D.
Respondent

I have read and fully discussed with Respondent Stephen Barnett Lewis, M.D. the terms and conditions and other matters contained in this Stipulated Surrender of License and Order. I approve its form and content.

DATED: 12/5/17

DAVID A. DEPOLO, ESQ.
Attorney for Respondent

ENDORSEMENT

The foregoing Stipulated Surrender of License and Order is hereby respectfully submitted for consideration by the Medical Board of California of the Department of Consumer Affairs.

Dated: 12/5/2017

Respectfully submitted,

XAVIER BECERRA
Attorney General of California
JANE ZACK SIMON
Supervising Deputy Attorney General

MACHAELA M. MINGARDI
Deputy Attorney General
Attorneys for Complainant

SF2016201969
Lewis Stipulated Surrender FINAL 2.docx

Exhibit A

Accusation/Petition to Revoke Probation No. 800-2015-014241

KAMALA D. HARRIS
Attorney General of California
JANE ZACK SIMON
Supervising Deputy Attorney General
MACHAELA M. MINGARDI
Deputy Attorney General
State Bar No. 194400
455 Golden Gate Avenue, Suite 11000
San Francisco, CA 94102-7004
Telephone: (415) 703-5696
Facsimile: (415) 703-5480
Attorneys for Complainant

BEFORE THE
MEDICAL BOARD OF CALIFORNIA
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

In the Matter of the Accusation and Petition to Revoke Probation Against, **STEPHEN BARNETT LEWIS, M.D.** **2425 East Street #15** **Concord, CA 94520-1926** **Physician's and Surgeon's Certificate No. G20175** Respondent.	Case No. 800-2015-014241 **ACCUSATION and** **PETITION TO REVOKE PROBATION**

Complainant alleges:

PARTIES

1. Kimberly Kirchmeyer (Complainant) brings this Accusation and Petition to Revoke Probation (Accusation) solely in her official capacity as the Executive Director of the Medical Board of California, Department of Consumer Affairs.

2. On April 7, 1971, the Medical Board of California issued Physician's and Surgeon's Certificate Number G20175 to Stephen Barnett Lewis, M.D. (Respondent). The Physician's and Surgeon's Certificate was in effect at all times relevant to the charges brought herein and will expire on March 31, 2018, unless renewed.

3. In a disciplinary action entitled "In the Matter of Accusation Against Stephen Barnett Lewis, M.D.," Case No. 12-2009-197653, the Medical Board of California issued a decision, effective October 5, 2012, in which Respondent's Physician's and Surgeon's Certificate was revoked. However, the revocation was stayed and Respondent's Physician's and Surgeon's Certificate was placed on probation for a period of five years of probation with certain terms and conditions. A copy of that decision is attached as Exhibit A and is incorporated by reference.

JURISDICTION

4. This Accusation and Petition to Revoke Probation is brought before the Medical Board of California (Board), Department of Consumer Affairs under the authority of the following laws. All section references are to the Business and Professions Code unless otherwise indicated.

5. Section 2004 of the Code provides, pertinent part, that the Medical Board shall have responsibility for:

"(a) The enforcement of the disciplinary and criminal provisions of the Medical Practice Act.

"(b) The administration and hearing of disciplinary actions.

"(c) Carrying out disciplinary actions appropriate to findings made by a panel or an administrative law judge.

"(d) Suspending, revoking, or otherwise limiting certificates after the conclusion f disciplinary actions.

"(e) Reviewing the quality of medical practice carried out by physician and surgeon certificate holders under the jurisdiction of the board.

". . ."

6. Section 2227 of the Code provides that a licensee who is found guilty under the Medical Practice Act may have his or her license revoked, suspended for a period not to exceed one year, placed on probation and required to pay the costs of probation monitoring, be publicly reprimanded, or such other action taken in relation to discipline as the Board deems proper.

///

7. Section 2234 of the Code states, in relevant part:

"The board shall take action against any licensee who is charged with unprofessional conduct. In addition to other provisions of this article, unprofessional conduct includes, but is not limited to, the following:

"(a) Violating or attempting to violate, directly or indirectly, assisting in or abetting the violation of, or conspiring to violate any provision of this chapter.

"(b) Gross negligence.

"(c) Repeated negligent acts. To be repeated, there must be two or more negligent acts or omissions. An initial negligent act or omission followed by a separate and distinct departure from the applicable standard of care shall constitute repeated negligent acts.

"(1) An initial negligent diagnosis followed by an act or omission medically appropriate for that negligent diagnosis of the patient shall constitute a single negligent act.

"(2) When the standard of care requires a change in the diagnosis, act, or omission that constitutes the negligent act described in paragraph (1), including, but not limited to, a reevaluation of the diagnosis or a change in treatment, and the licensee's conduct departs from the applicable standard of care, each departure constitutes a separate and distinct breach of the standard of care."

". . . ."

8. Section 2242, subdivision (a), of the Code states that "[p]rescribing, dispensing, or furnishing dangerous drugs as defined in Section 4022 without an appropriate prior examination and a medical indication, constitutes unprofessional conduct."

9. Section 2266 of the Code states: "The failure of a physician and surgeon to maintain adequate and accurate records relating to the provision of services to their patients constitutes unprofessional conduct."

FACTS

10. At all times relevant to this matter, Respondent was licensed and practicing medicine in Concord, California.

11. Respondent provides his weight loss patients with two handouts, one containing two diets, an 800 calorie zero fat meal plan and a 1000 calorie meal plan, and one titled "What Every Patient Should Be Taking" which recommends four over the counter supplements, 5000 international units of Vitamin D3 daily, 1000 mg fish oil/omega-3 daily, 81 mg enteric-coated aspirin daily, and a multivitamin daily.

12. Respondent began using electronic records in or around 2012. As late as June 2016, he was unclear about who signed prescriptions and how it was done. He responded "I have no clue" when asked how to use the electronic records in his office for prescribing. He said he was not familiar with how electronic signatures for the nurse practitioner or the medical assistant were set up or what access they had and that he did not know how electronically-generated prescriptions were generated or recorded.

FIRST CAUSE FOR DISCIPLINE
(Gross Negligence and/or Repeated Negligent Acts)

13. Respondent is guilty of unprofessional conduct and subject to disciplinary action under section 2234, subdivision (b) (gross negligence) and/or (c) (repeated negligent acts), in that, as described above, he did not have an adequate familiarity with his electronic health records.

SECOND CAUSE FOR DISCIPLINE
(Repeated Negligent Acts)

14. Respondent is guilty of unprofessional conduct and subject to disciplinary action under section 2234, subdivision (c) (repeated negligent acts), in that, as described above, he provided all his patients with a handout recommending that they take four specified supplements without particularizing the recommendations to the specific patient, without explaining potential risks, and without explaining the potential benefits accurately. In addition, the handout recommends excessive amounts of Vitamin D, fails to specify the dosage of multivitamin recommended, and fails to specify the limited circumstances under which a daily aspirin regimen is appropriate.

///

PATIENT P-1[1]

15. Respondent began treating Patient P-1, a 60 year old woman, some time prior to 2012. Respondent is P-1's primary care physician and was addressing, among other things, her post-bariatric surgery status and weight issues.

16. None of the chart notes for P-1's visits with Respondent's office between January 30, 2012 and October 12, 2015, the period over which his treatment of P-1 was reviewed, include a past medical history, family history, or social history. They do not reflect specific counseling or referrals for counseling regarding behavioral modification, exercise, and nutrition to maximize weight loss except occasionally to note something along the lines of "diet reviewed."

17. P-1's chart notes do not include a review of systems and generally do not include documentation of a physical examination.

18. On April 18, 2013, P-1 saw Respondent concerning weight loss. Her weight was 190.5 pounds and her BMI 31. Without documenting a physical examination, except to note "PE see VS" (physical examination see vital signs), and without ordering an EKG and baseline laboratory tests, Respondent started P-1 on Qsymia[2] 7.5 mg/46 mg, one capsule daily. There is no documentation that Respondent discussed the risks of Qsymia with P-1 and no explanation for starting the medication at a dose higher than the recommended 3.75/23. There is no documentation of a discussion of treatment goals or a treatment plan. Respondent was also prescribing Daytrana[3] 15 mg patches for P-1 at the same time.

19. Throughout Respondent's treatment of P-1, there is very little documentation of a treatment plan or specific goals of treatment, no check on compliance with any of the behavioral

---

[1] The patients are designated in this document as Patients P-1 through P-4 to protect their privacy. Respondent knows the names of the patients and can confirm their identities through discovery.

[2] Qsymia is a trade name for a combination of phentermine and topiramate in an extended-release capsule. It is a Schedule IV controlled substance and is a dangerous drug as defined in section 4022. Phentermine is a sympathomimetic amine anorectic, a stimulant similar to an amphetamine, and topiramate is a seizure medication, also called an anticonvulsant. Qsymia is a weight loss medication.

[3] Daytrana is a skin patch that contains methylphenidate, a central nervous system stimulant. Methylphenidate affects chemicals in the brain and nerves that contribute to hyperactivity and impulse control. It is used to treat Attention Deficit Hyperactivity Disorder. Daytrana is a Schedule II controlled substance and is a dangerous drug as defined in section 4022.

or exercise or nutritional needs during weight loss and maintenance periods, and no evidence that annual EKGs were performed as is indicated when a patient is taking a sympathomimetic drug such as phentermine.

20. P-1's next visit with Respondent was over three months later, on July 25, 2013. There is no documentation of a discussion concerning her condition with respect to weight loss or possible side effects from the use of Qsymia. Her weight is listed as 192 pounds.

21. The following visits are separated by three months, four months, and one month, respectively. On February 17, 2014, ten months after Respondent first prescribed Qsymia, he notes that "Qsymia is working." Except to note "PE Stable exam," there is no documentation of a physical examination and no intervening laboratory tests. Her weight is listed as 187.2 pounds.

22. On August 25, 2014, the chart notes state that P-1's Qsymia dosage was increased to 11/45 daily at P-1's request but there is no such dosage. In fact, her dosage was increased to 15.5/92. Her weight was not documented but the notes state that she was "doing well with diet." The visit was with Respondent's Nurse Practitioner but was electronically signed by Respondent as was the prescription.

23. On January 12, 2015, the second visit after increasing the dosage of Qsymia, P-1's weight was listed as 185.9 pounds. The notes say "diet reviewed." The medications listed include both Qsymia 15.5/92 and the lower dose Qsymia 7.5/46.

24. P-1's next visit was seven months later, on August 10, 2015, with Respondent's nurse practitioner. Her weight was listed as 187.8 and she is documented as stating that while Qsymia was helpful, it was cost prohibitive. She was interested in trying another method but wanted to stay on Qsymia for another three months. She was issued a prescription for Qsymia 15.5/92 although the medication list includes only Qsymia 7.5/46. The chart note states that diet and activity were reviewed. The prescription was signed by Respondent and the chart note was electronically signed by him.

25. P-1's next visit, and the final one reviewed, was with Respondent on October 12, 2015. Her weight was listed as 192.4 pounds and her BMI as 31. Qsymia 7.5/46 is still listed as a medication.

THIRD CAUSE FOR DISCIPLINE

(Gross Negligence, Repeated Negligent Acts, Prescribing without Appropriate Prior Examination, Failure to Maintain Adequate Records)

26. Respondent is guilty of unprofessional conduct and subject to disciplinary action under section 2234, subdivision (b) (gross negligence) and/or (c) (repeated negligent acts), and/or section 2242, subdivision (a) (prescribing without appropriate prior examination), of the Code and section 2266 (inadequate records) of the Code in that Respondent engaged in the conduct described above including, but not limited to, the following:

A. Respondent failed to provide three essential elements of a weight loss program in a meaningful way, namely, the behavioral, exercise, and nutrition elements of a weight management program.

B. Respondent's medical management of P-1 did not include proper screening, a treatment plan, goal-setting, medical monitoring, or preparation for weight loss maintenance.

C. Respondent prescribed Qsymia for P-1 and continued to prescribe Qsymia for her without appropriate prior examinations.

D. P-1's visits with Respondent's office after the initial prescription of Qsymia were three to four months apart while the standard of practice requires medical visits at least twice a month until the patient is stable and then at least monthly.

E. Respondent prescribed two stimulants for P-1 at the same time, Daytrana and Qsymia.

F. The charting in P-1's records are cursory, including, for example, frequently using variations of "PE see VS" for physical examinations; often repetitious; and probably from a template without changes appropriate to a particular visit.

PATIENT P-2

27. Patient P-2 is a 60 year old woman who was referred to Respondent for weight loss, hypothyroidism, and high cholesterol. Respondent first saw P-2 on August 29, 2011. The chart notes for that visit include no past medical history, no past surgical history, no family history, and

no social history. P-2's weight is listed as 201.6 pounds and her BMI as 33. The chart note contained no review of systems, no assessment of overall picture, and no clear plan.

28. P-2 saw Respondent's physician assistant on May 10, 2012. At that time, P-2's weight was 177.6 pounds and her BMI was 29. The physician assistant did a physical exam, counseled P-2 concerning diet and exercise and began prescribing Apidex[4] for her. There was still no past medical history, past surgical history, family history, or social history documented and no specific treatment plan or goal set out. The physician assistant told P-2 to return in three weeks to have her weight and blood pressure measured. The chart note was signed with Respondent's e-signature.

29. P-2 did not return until August 2, 2012 when she was seen by a physician training under Respondent. P-2's weight was 177 and her BMI was 29. The physician did a review of systems and a physical examination, discussed diet and exercise with P-2, and resumed prescribing Adipex after discussing its risks and benefits.

30. By November 13, 2012, P-2's weight was down to 168.5 and her BMI was 27. The physician training under Respondent prescribed Adipex for P-2 after discussing diet and exercise and advising her to discontinue the drug if she had adverse side effects. The physician told P-2 to return in three weeks.

31. P-2 did not return until June 3, 2013, nearly seven months later. She had gained twelve pounds—her weight was 180.9 and her BMI was 29. Respondent did not document a physical examination or a specific treatment plan or goal and reinstated P-2's prescription for Adipex. P-2 did not return until October 21, 2013, four and a half months later.

32. Respondent continued prescribing Adipex for P-2 through at least December 9, 2015. The records reflect that, between June 3, 2013 and December 9, 2015, P-2's weight fluctuated between a low of 169.6 on April 22, 2014 and a high of 183.9 on December 9, 2015. Only one

[4] Adipex is a trade name for phentermine, a sympathomimetic amine anorectic, a stimulant similar to an amphetamine. It is a weight loss medication. Adipex is a Schedule IV controlled substance and is a dangerous drug as defined in section 4022.

chart note entry during this period reflects a brief summary of a physical examination. Otherwise, physical examination documentation is typically a variation on "PE see VS."

33. Throughout Respondent's treatment of P-2, there is very little documentation of a treatment plan or specific goals of treatment, no check on compliance with any of the behavioral or exercise or nutritional needs during weight loss and maintenance periods, and no evidence that annual EKGs were performed as is indicated when a patient is taking a sympathomimetic drug such as phentermine.

FOURTH CAUSE FOR DISCIPLINE

(Gross Negligence, Repeated Negligent Acts, Prescribing without Appropriate Prior Examination, Failure to Maintain Adequate Records)

34. Respondent is guilty of unprofessional conduct and subject to disciplinary action under section 2234, subdivision (b) (gross negligence) and/or (c) (repeated negligent acts), and/or section 2242, subdivision (a) (prescribing without appropriate prior examination), and section 2266 (inadequate records) of the Code in that Respondent engaged in the conduct described above including, but not limited to, the following:

A. Respondent's medical management of P-2 did not include proper screening, a treatment plan, goal-setting, medical monitoring, or preparation for weight loss maintenance.

B. Respondent did not document a summary of interval history when P-2 went months between appointments.

C. Respondent prescribed Adipex for P-2 and continued to prescribe Adipex for her without appropriate prior examinations.

D. The charting in P-2's records are cursory, including, for example, frequently using variations of "PE see VS" for physical examinations and failing to document communication with the referring physician regarding Respondent's impression and recommendations for P-2 for the issues on which he was consulting.

///

///

PATIENT P-3

35. Patient P-3 is a 55 year old man. He began seeing Respondent some time before 2010 when he had bariatric surgery. For the period from December 6, 2011 through January 6, 2016, Respondent or his staff saw P-3 approximately 59 times, more than one visit a month.

36. On December 6, 2011, P-3's weight was 197.5 pounds. The chart note includes no past medical or social history and a past surgical history that states only bariatric surgery without describing the type of bariatric surgery.

37. Throughout Respondent's treatment of P-3, there is very little documentation of a treatment plan or specific goals of treatment, no check on compliance with any of the behavioral or exercise or nutritional needs during weight loss and maintenance periods, and no evidence that annual EKGs were performed as is indicated when a patient is taking a sympathomimetic drug such as phentermine.

38. Respondent prescribed one and a half tablets of Adipex for P-3 throughout this period and his physician assistant added an additional 30 mg of Fastin[5] daily on September 6, 2012. There is no documentation of a reason for adding Fastin or indication that the risks of adding another stimulant medication were discussed with P-3. Both of these medications are trade names for phentermine. Respondent continued prescribing both medications through at least December 2015 or January 2016.

39. The medical records are, in general, cursory, medication and diagnosis lists are frequently out-of-date, and there are frequent notations of some variation of "PE see VS" which is an inadequate notation of a physical examination.

40. On January 6, 2016, P-3's weight was listed as 194.5 with a notation that he had gained weight over the holidays.

///

///

[55] Fastin is a trade name for phentermine, a sympathomimetic amine anorectic similar to an amphetamine. It is a weight loss medication. Fastin is a Schedule IV controlled substance and is a dangerous drug as defined in section 4022.

FIFTH CAUSE FOR DISCIPLINE

(Gross Negligence, Repeated Negligent Acts, Prescribing without Appropriate Prior Examination, Failure to Maintain Adequate Records)

41. Respondent is guilty of unprofessional conduct and subject to disciplinary action under section 2234, subdivision (b) (gross negligence) and/or (c) (repeated negligent acts), and/or section 2242, subdivision (a) (prescribing without appropriate prior examination), of the Code and section 2266 (inadequate records) of the Code in that Respondent engaged in the conduct described above including, but not limited to, the following:

A. Respondent's medical management of P-3 did not include proper screening, a documented treatment plan, discussion of goal-setting, medical monitoring, or preparation for weight loss maintenance.

B. Respondent prescribed higher than the recommended dose of phentermine, 1.5 tablets of Adipex daily, as well as the full dose of Fastin, another brand name of phentermine, and failed to warn P-3 about significant potential side effects or to give warning that Adipex was being prescribed in amounts higher than recommended.

C. Respondent prescribed Adipex and Fastin for P-3 and continued to prescribe Adipex and Fastin for him without appropriate prior examinations.

D. The charting in P-3's records are cursory, including, for example, frequently using variations of "PE see VS" for physical examinations; often repetitious; and probably from a template without changes appropriate to a particular visit.

PATIENT P-4

42. Patient P-4 is a 45 year old man. He was referred to Respondent for low testosterone and weight gain. Respondent first saw P-4 on January 7, 2013.

43. The chart notes for January 7, 2013 do not include a past medical history, family history, or social history. There is a complicated medication list including two Schedule II opioids, an antiseizure drug, a stimulant,[6] and a muscle relaxant associated with serious

[6] Nuvigil is the stimulant on P-4's medication list. Nuvigil is a trade name for armodafinil, a stimulant used to treat sleepiness caused by narcolepsy, apnea, or shift work sleep (continued...)

arrhythmias. The diagnoses listed are dysmetabolic syndrome X, morbid obesity, and testicular hypofunction OT. No diagnoses are listed for the opioids being prescribed. While P-4's self-reported medical history mentions palpitations and hypertension, pain, heat and cold intolerance, and hair changes, none of this is included in his chart notes. P-4's weight is documented as 310.5 and his BMI as 42. The notes include a cursory physical examination and a statement that weight loss and diet were reviewed. Respondent prescribed Adipex for P-4 but it was not mentioned in P-4's chart notes until October 29, 2013, nearly ten months later.

44. Respondent or his staff saw P-4 once to twice a month through at least January 26, 2016. He prescribed Adipex for P-4 throughout this time.

45. Throughout Respondent's treatment of P-4, there is very little documentation of a treatment plan or specific goals of treatment, no check on compliance with any of the behavioral or exercise or nutritional needs during weight loss and maintenance periods, and no evidence that annual EKGs were performed as is indicated when a patient is taking a sympathomimetic drug such as phentermine.

46. On August 11, 2014, P-4 saw Respondent's nurse practitioner. He had stopped taking his blood pressure medication because he had lost weight but had regained the weight and had been feeling funny for days, was flushed, and was worried that his blood pressure might be too high. His blood pressure was recorded at 148/120 and 150/120. The nurse practitioner prescribed two medications for hypertension and told P-4 to come back the following day.

47. The next day, P-4's blood pressure was dangerously high at 160/130 and 150/120. An EKG and laboratory tests were done and additional hypertension medications prescribed. The EKG was abnormal with possible left atrial enlargement among other things. By August 14, 2014, P-4's blood pressure was down to 120/100 and was back to normal by August 18, 2014.

48. The medical records throughout Respondent's treatment of P-4, a high risk patient on a complicated medical regimen, are incomplete and difficult to interpret with regard to

---

(...continued)
disorders. Nuvigil is a Schedule IV controlled substance and is a dangerous drug as defined in section 4022.

medication management. There is no clarity about P-4's diagnoses and therapy and there is no documented communication with the primary care physician to help clarify P-4's medical condition. The medication and diagnosis lists are frequently out-of-date and there are frequent notations of some variation of "PE see VS" which is an inadequate notation of a physical examination.

49. On January 26, 2016, P-3's weight was listed as 194.5 with a notation that he had gained weight over the holidays.

SIXTH CAUSE FOR DISCIPLINE

(Gross Negligence, Repeated Negligent Acts, Prescribing without Appropriate Prior Examination, Failure to Maintain Adequate Records)

50. Respondent is guilty of unprofessional conduct and subject to disciplinary action under section 2234, subdivision (b) (gross negligence) and/or (c) (repeated negligent acts), and/or section 2242, subdivision (a) (prescribing without appropriate prior examination), of the Code and section 2266 (inadequate records) of the Code in that Respondent engaged in the conduct described above including, but not limited to, the following:

A. Respondent's medical management of P-4 did not include proper screening, a documented treatment plan, discussion of goal-setting, medical monitoring, or preparation for weight loss maintenance.

B. Respondent prescribed higher than the recommended dose of phentermine, 1.5 tablets of Adipex daily, in addition to a second stimulant medication, Nuvigil, and failed to warn P-4 about significant potential side effects or to give warning that Adipex was being prescribed in an amount higher than recommended.

C. Respondent prescribed Adipex for P-4 and continued to prescribe Adipex for him without appropriate prior examinations.

D. The chart notes in P-4's records are incomplete, for example, frequently using some variation of "PE see VS" for physical examinations; do not record the palpitations and hypertension referenced in P-4's self-reported medical history; do not provide sufficient clarity of

treatment for such a complicated patient; and do not reflect communication with P-4's primary care physician.

CAUSE FOR REVOCATION OF PROBATION

51. As stated above, an Accusation was filed before the Board on January 9, 2012 in case number 12-2009-197653, in which it was alleged that Respondent had engaged in multiple departures from the standard of care, including prescribing controlled substances without an appropriate examination, in violation of the above-recited provisions of the Medical Practice Act. The Board and Respondent thereafter entered into a stipulated settlement, by which Respondent agreed that his certificate would be placed on probation to the Board with terms and conditions. The stipulated settlement specifically provided that failure to fully comply with any term or condition of probation, including the requirement that Respondent obey all laws, would be a violation of his settlement agreement with the Board and would authorize the Board to take action to carry out the disciplinary order that was stayed. The Stipulation further provided that, should the Board file a Petition to Revoke Probation, Respondent's probation would continue until such time as a final decision on the Petition was rendered. A copy of the Decision is attached to this Accusation and Petition to Revoke Probation as Exhibit A and is incorporated in this Petition by reference, as though fully set out herein.

A. Respondent is guilty of unprofessional conduct and his probation is subject to revocation based upon his violations of the Medical Practice Act, as set forth in the above Causes for Disciplinary Action.

PRAYER

WHEREFORE, complainant prays that a hearing be held and that the Board issue an order:

1. Revoking or suspending Physician's and Surgeon's Certificate Number G20175, issued to Stephen Barnett Lewis, M.D.;

2. Revoking Respondent Stephen Barnett Lewis, M.D.'s current probation and carrying out the disciplinary order that was stayed, a revocation of Respondent's license;

3. Revoking, suspending or denying approval of Stephen Barnett Lewis, M.D.'s authority to supervise physician assistants, pursuant to section 3527 of the Code;

4. Ordering Stephen Barnett Lewis, M.D., if placed on probation, to pay the Medical Board the costs of probation monitoring;

5. Taking such other and further action as deemed necessary and proper.

DATED: December 7, 2016

KIMBERLY KIRCHMEYER
Executive Director
Medical Board of California
Department of Consumer Affairs
State of California
Complainant

SF2016201969
41635319.doc

Exhibit A

Decision and Order

Medical Board of California Case No. 12-2009-197653

BEFORE THE
MEDICAL BOARD OF CALIFORNIA
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

In the Matter of the Accusation Against:	)	
STEPHEN BARNETT LEWIS, M.D.	)	Case No. 12-2009-197653
Physician's and Surgeon's Certificate No. G-20175	)	
Respondent	)	

DECISION

The attached Stipulated Settlement and Disciplinary Order is hereby adopted as the Decision and Order of the Medical Board of California, Department of Consumer Affairs, State of California.

This Decision shall become effective at 5:00 p.m. on October 5, 2012.

IT IS SO ORDERED: September 6, 2012

MEDICAL BOARD OF CALIFORNIA

Janet Salomonson, M.D., Vice Chair
Panel A

KAMALA D. HARRIS
Attorney General of California
JOSE R. GUERRERO
Supervising Deputy Attorney General
LYNNE K. DOMBROWSKI
Deputy Attorney General
State Bar No. 128080
455 Golden Gate Avenue, Suite 11000
San Francisco, CA 94102-7004
Telephone: (415) 703-5578
Facsimile: (415) 703-5480
Attorneys for Complainant

BEFORE THE
MEDICAL BOARD OF CALIFORNIA
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

In the Matter of the Accusation Against: **STEPHEN BARNETT LEWIS, M.D.** 2425 East Street, #15 Concord, CA 94520 Physician's and Surgeon's Certificate No. G20175 Respondent.	Case No. 12-2009-197653 OAH No. 2012 030367 **STIPULATED SETTLEMENT AND DISCIPLINARY ORDER**

IT IS HEREBY STIPULATED AND AGREED by and between the parties to the above-entitled proceedings that the following matters are true:

PARTIES

1. Linda K. Whitney (Complainant) is the Executive Director of the Medical Board of California. She brought this action solely in her official capacity and is represented in this matter by Kamala D. Harris, Attorney General of the State of California, by Lynne K. Dombrowski, Deputy Attorney General.

2. Respondent Stephen Barnett Lewis, M.D. (Respondent) is represented in this proceeding by attorney Wallace C. Doolittle, whose address is: Law Offices of Wallace C. Doolittle, 1260 B Street, Suite 220, Hayward, CA 94541.

3. On or about April 7, 1971, the Medical Board of California issued Physician's and Surgeon's Certificate No. G20175 to Stephen Barnett Lewis, M.D. (Respondent). Unless renewed, the certificate will expire on March 31, 2014.

JURISDICTION

4. Accusation No. 12-2009-197653 was filed before the Medical Board of California (Board), Department of Consumer Affairs, and is currently pending against Respondent. The Accusation and all other statutorily required documents were properly served on Respondent on January 9, 2012. Respondent timely filed his Notice of Defense contesting the Accusation.

5. A copy of Accusation No. 12-2009-197653 is attached as Exhibit A and incorporated herein by reference.

ADVISEMENT AND WAIVERS

6. Respondent has carefully read, fully discussed with counsel, and understands the charges and allegations in Accusation No. 12-2009-197653. Respondent has also carefully read, fully discussed with counsel, and understands the effects of this Stipulated Settlement and Disciplinary Order.

7. Respondent is fully aware of his legal rights in this matter, including the right to a hearing on the charges and allegations in the Accusation; the right to be represented by counsel at his own expense; the right to confront and cross-examine the witnesses against him; the right to present evidence and to testify on his own behalf; the right to the issuance of subpoenas to compel the attendance of witnesses and the production of documents; the right to reconsideration and court review of an adverse decision; and all other rights accorded by the California Administrative Procedure Act and other applicable laws.

8. Respondent voluntarily, knowingly, and intelligently waives and gives up each and every right set forth above.

///

///

///

///

CULPABILITY

9. Respondent does not contest that, at an administrative hearing, Complainant could establish a prima facie case with respect to the charges and allegations contained in Accusation No. 12-2009-197653 and that he has thereby subjected his license to disciplinary action. Respondent hereby gives up his right to contest those charges.

10. Respondent agrees that his Physician's and Surgeon's Certificate is subject to discipline and he agrees to be bound by the Medical Board of California's (Board's) imposition of discipline as set forth in the Disciplinary Order below.

11. Respondent agrees that, if he ever petitions for early termination or modification of probation, or if the Board ever petitions for revocation of probation, all of the charges and allegations contained in Accusation No. 12-2009-197653 shall be deemed true, correct and fully admitted by Respondent for purposes of that proceeding or any other licensing proceeding involving Respondent in the State of California.

CONTINGENCY

12. This stipulation shall be subject to approval by the Medical Board of California. Respondent understands and agrees that counsel for Complainant and the staff of the Medical Board of California may communicate directly with the Board regarding this stipulation and settlement, without notice to or participation by Respondent or his counsel. By signing the stipulation, Respondent understands and agrees that he may not withdraw his agreement or seek to rescind the stipulation prior to the time the Board considers and acts upon it. If the Board fails to adopt this stipulation as its Decision and Order, the Stipulated Settlement and Disciplinary Order shall be of no force or effect, except for this paragraph, it shall be inadmissible in any legal action between the parties, and the Board shall not be disqualified from further action by having considered this matter.

13. The parties understand and agree that facsimile copies of this Stipulated Settlement and Disciplinary Order, including facsimile signatures thereto, shall have the same force and effect as the originals.

14. In consideration of the foregoing admissions and stipulations, the parties agree that the Board may, without further notice or formal proceeding, issue and enter the following Disciplinary Order:

DISCIPLINARY ORDER

IT IS HEREBY ORDERED that Physician's and Surgeon's Certificate No. G20175 issued to Respondent Stephen Barnett Lewis, M.D. (Respondent) is revoked. However, the revocation is stayed and Respondent is placed on probation for five (5) years on the following terms and conditions.

1. PRESCRIBING PRACTICES COURSE. Within 60 calendar days of the effective date of this Decision, Respondent shall enroll in a course in prescribing practices equivalent to the Prescribing Practices Course at the Physician Assessment and Clinical Education Program, University of California, San Diego School of Medicine (Program), approved in advance by the Board or its designee. Respondent shall provide the program with any information and documents that the Program may deem pertinent. Respondent shall participate in and successfully complete the classroom component of the course not later than six (6) months after Respondent's initial enrollment. Respondent shall successfully complete any other component of the course within one (1) year of enrollment. The prescribing practices course shall be at Respondent's expense and shall be in addition to the Continuing Medical Education (CME) requirements for renewal of licensure.

A prescribing practices course taken after the acts that gave rise to the charges in the Accusation, but prior to the effective date of the Decision may, in the sole discretion of the Board or its designee, be accepted towards the fulfillment of this condition if the course would have been approved by the Board or its designee had the course been taken after the effective date of this Decision.

Respondent shall submit a certification of successful completion to the Board or its designee not later than 15 calendar days after successfully completing the course, or not later than 15 calendar days after the effective date of the Decision, whichever is later.

///

2. MEDICAL RECORD KEEPING COURSE. Within 60 calendar days of the effective date of this Decision, Respondent shall enroll in a course in medical record keeping equivalent to the Medical Record Keeping Course offered by the Physician Assessment and Clinical Education Program, University of California, San Diego School of Medicine (Program), approved in advance by the Board or its designee. Respondent shall provide the program with any information and documents that the Program may deem pertinent. Respondent shall participate in and successfully complete the classroom component of the course not later than six (6) months after Respondent's initial enrollment. Respondent shall successfully complete any other component of the course within one (1) year of enrollment. The medical record keeping course shall be at Respondent's expense and shall be in addition to the Continuing Medical Education (CME) requirements for renewal of licensure.

A medical record keeping course taken after the acts that gave rise to the charges in the Accusation, but prior to the effective date of the Decision may, in the sole discretion of the Board or its designee, be accepted towards the fulfillment of this condition if the course would have been approved by the Board or its designee had the course been taken after the effective date of this Decision.

Respondent shall submit a certification of successful completion to the Board or its designee not later than 15 calendar days after successfully completing the course, or not later than 15 calendar days after the effective date of the Decision, whichever is later.

3. MONITORING - PRACTICE. Within 30 calendar days of the effective date of this Decision, Respondent shall submit to the Board or its designee for prior approval as a practice monitor, the name and qualifications of one or more licensed physicians and surgeons whose licenses are valid and in good standing, and who are preferably American Board of Medical Specialties (ABMS) certified. A monitor shall have no prior or current business or personal relationship with Respondent, or other relationship that could reasonably be expected to compromise the ability of the monitor to render fair and unbiased reports to the Board, including but not limited to any form of bartering, shall be in Respondent's field of practice, and must agree to serve as Respondent's monitor. Respondent shall pay all monitoring costs.

The Board or its designee shall provide the approved monitor with copies of the Decision(s) and Accusation(s), and a proposed monitoring plan. Within 15 calendar days of receipt of the Decision(s), Accusation(s), and proposed monitoring plan, the monitor shall submit a signed statement that the monitor has read the Decision(s) and Accusation(s), fully understands the role of a monitor, and agrees or disagrees with the proposed monitoring plan. If the monitor disagrees with the proposed monitoring plan, the monitor shall submit a revised monitoring plan with the signed statement for approval by the Board or its designee.

Within 60 calendar days of the effective date of this Decision, and continuing throughout probation, Respondent's practice shall be monitored by the approved monitor. Respondent shall make all records available for immediate inspection and copying on the premises by the monitor at all times during business hours and shall retain the records for the entire term of probation.

If Respondent fails to obtain approval of a monitor within 60 calendar days of the effective date of this Decision, Respondent shall receive a notification from the Board or its designee to cease the practice of medicine within three (3) calendar days after being so notified. Respondent shall cease the practice of medicine until a monitor is approved to provide monitoring responsibility.

The monitor(s) shall submit a quarterly written report to the Board or its designee which includes an evaluation of Respondent's performance, indicating whether Respondent's practices are within the standards of practice of medicine and whether Respondent is practicing medicine safely. It shall be the sole responsibility of Respondent to ensure that the monitor submits the quarterly written reports to the Board or its designee within 10 calendar days after the end of the preceding quarter.

If the monitor resigns or is no longer available, Respondent shall, within 5 calendar days of such resignation or unavailability, submit to the Board or its designee, for prior approval, the name and qualifications of a replacement monitor who will be assuming that responsibility within 15 calendar days. If Respondent fails to obtain approval of a replacement monitor within 60 calendar days of the resignation or unavailability of the monitor, Respondent shall receive a notification from the Board or its designee to cease the practice of medicine within three (3)

calendar days after being so notified Respondent shall cease the practice of medicine until a replacement monitor is approved and assumes monitoring responsibility.

In lieu of a monitor, Respondent may participate in a professional enhancement program equivalent to the one offered by the Physician Assessment and Clinical Education Program at the University of California, San Diego School of Medicine, that includes, at minimum, quarterly chart review, semi-annual practice assessment, and semi-annual review of professional growth and education. Respondent shall participate in the professional enhancement program at Respondent's expense during the term of probation.

4. NOTIFICATION. Within seven (7) days of the effective date of this Decision, the Respondent shall provide a true copy of this Decision and Accusation to the Chief of Staff or the Chief Executive Officer at every hospital where privileges or membership are extended to Respondent, at any other facility where Respondent engages in the practice of medicine, including all physician and locum tenens registries or other similar agencies, and to the Chief Executive Officer at every insurance carrier which extends malpractice insurance coverage to Respondent. Respondent shall submit proof of compliance to the Board or its designee within 15 calendar days.

This condition shall apply to any change(s) in hospitals, other facilities or insurance carrier.

5. SUPERVISION OF PHYSICIAN ASSISTANTS. During probation, Respondent is prohibited from supervising physician assistants.

6. OBEY ALL LAWS. Respondent shall obey all federal, state and local laws, all rules governing the practice of medicine in California and remain in full compliance with any court ordered criminal probation, payments, and other orders.

7. QUARTERLY DECLARATIONS. Respondent shall submit quarterly declarations under penalty of perjury on forms provided by the Board, stating whether there has been compliance with all the conditions of probation.

Respondent shall submit quarterly declarations not later than 10 calendar days after the end of the preceding quarter.

///

8. GENERAL PROBATION REQUIREMENTS.

Compliance with Probation Unit

Respondent shall comply with the Board's probation unit and all terms and conditions of this Decision.

Address Changes

Respondent shall, at all times, keep the Board informed of Respondent's business and residence addresses, email address (if available), and telephone number. Changes of such addresses shall be immediately communicated in writing to the Board or its designee. Under no circumstances shall a post office box serve as an address of record, except as allowed by Business and Professions Code section 2021(b).

Place of Practice

Respondent shall not engage in the practice of medicine in Respondent's or patient's place of residence, unless the patient resides in a skilled nursing facility or other similar licensed facility.

License Renewal

Respondent shall maintain a current and renewed California physician's and surgeon's license.

Travel or Residence Outside California

Respondent shall immediately inform the Board or its designee, in writing, of travel to any areas outside the jurisdiction of California which lasts, or is contemplated to last, more than thirty (30) calendar days.

In the event Respondent should leave the State of California to reside or to practice Respondent shall notify the Board or its designee in writing 30 calendar days prior to the dates of departure and return.

9. INTERVIEW WITH THE BOARD OR ITS DESIGNEE. Respondent shall be available in person upon request for interviews either at Respondent's place of business or at the probation unit office, with or without prior notice throughout the term of probation.

///

10. NON-PRACTICE WHILE ON PROBATION. Respondent shall notify the Board or its designee in writing within 15 calendar days of any periods of non-practice lasting more than 30 calendar days and within 15 calendar days of Respondent's return to practice. Non-practice is defined as any period of time Respondent is not practicing medicine in California as defined in Business and Professions Code sections 2051 and 2052 for at least 40 hours in a calendar month in direct patient care, clinical activity or teaching, or other activity as approved by the Board. All time spent in an intensive training program which has been approved by the Board or its designee shall not be considered non-practice. Practicing medicine in another state of the United States or Federal jurisdiction while on probation with the medical licensing authority of that state or jurisdiction shall not be considered non-practice. A Board-ordered suspension of practice shall not be considered as a period of non-practice.

In the event Respondent's period of non-practice while on probation exceeds 18 calendar months, Respondent shall successfully complete a clinical training program that meets the criteria of Condition 18 of the current version of the Board's "Manual of Model Disciplinary Orders and Disciplinary Guidelines" prior to resuming the practice of medicine.

Respondent's period of non-practice while on probation shall not exceed two (2) years.

Periods of non-practice will not apply to the reduction of the probationary term.

Periods of non-practice will relieve Respondent of the responsibility to comply with the probationary terms and conditions with the exception of this condition and the following terms and conditions of probation: Obey All Laws; and General Probation Requirements.

11. COMPLETION OF PROBATION. Respondent shall comply with all financial obligations (e.g., restitution, probation costs) not later than 120 calendar days prior to the completion of probation. Upon successful completion of probation, Respondent's certificate shall be fully restored.

12. VIOLATION OF PROBATION. Failure to fully comply with any term or condition of probation is a violation of probation. If Respondent violates probation in any respect, the Board, after giving Respondent notice and the opportunity to be heard, may revoke probation and carry out the disciplinary order that was stayed. If an Accusation, or Petition to Revoke Probation,

or an Interim Suspension Order is filed against Respondent during probation, the Board shall have continuing jurisdiction until the matter is final, and the period of probation shall be extended until the matter is final.

13. LICENSE SURRENDER. Following the effective date of this Decision, if Respondent ceases practicing due to retirement or health reasons or is otherwise unable to satisfy the terms and conditions of probation, Respondent may request to surrender his or her license. The Board reserves the right to evaluate Respondent's request and to exercise its discretion in determining whether or not to grant the request, or to take any other action deemed appropriate and reasonable under the circumstances. Upon formal acceptance of the surrender, Respondent shall within 15 calendar days deliver Respondent's wallet and wall certificate to the Board or its designee and Respondent shall no longer practice medicine. Respondent will no longer be subject to the terms and conditions of probation. If Respondent re-applies for a medical license, the application shall be treated as a petition for reinstatement of a revoked certificate.

14. PROBATION MONITORING COSTS. Respondent shall pay the costs associated with probation monitoring each and every year of probation, as designated by the Board, which may be adjusted on an annual basis. Such costs shall be payable to the Medical Board of California and delivered to the Board or its designee no later than January 31 of each calendar year.

ACCEPTANCE

I have carefully read the above Stipulated Settlement and Disciplinary Order and have fully discussed it with my attorney, Wallace C. Doolittle. I understand the stipulation and the effect it will have on my Physician's and Surgeon's Certificate. I enter into this Stipulated Settlement and Disciplinary Order voluntarily, knowingly, and intelligently, and agree to be bound by the Decision and Order of the Medical Board of California.

DATED: 11 JULY 2012

STEPHEN BARNETT LEWIS, M.D.
Respondent

I have read and fully discussed with Respondent Stephen Barnett Lewis, M.D. the terms and conditions and other matters contained in the above Stipulated Settlement and Disciplinary Order. I approve its form and content.

DATED: 7/13/12

Wallace C. Doolittle
Attorney for Respondent

ENDORSEMENT

The foregoing Stipulated Settlement and Disciplinary Order is hereby respectfully submitted for consideration by the Medical Board of California of the Department of Consumer Affairs.

Dated: 7/19/2012

Respectfully submitted,

KAMALA D. HARRIS
Attorney General of California
JOSE R. GUERRERO
Supervising Deputy Attorney General

LYNNE K. DOMBROWSKI
Deputy Attorney General
Attorneys for Complainant

SF2011202102

Exhibit A

Accusation No. 12-2009-197653

KAMALA D. HARRIS
Attorney General of California
JOSE R. GUERRERO
Supervising Deputy Attorney General
LYNNE K. DOMBROWSKI
Deputy Attorney General
State Bar No. 128080
455 Golden Gate Avenue, Suite 11000
San Francisco, CA 94102-7004
Telephone: (415) 703-5578
Facsimile: (415) 703-5480
Attorneys for Complainant

BEFORE THE
MEDICAL BOARD OF CALIFORNIA
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

In the Matter of the Accusation Against: **STEPHEN BARNETT LEWIS, M.D.** 2425 East Street, #15 Concord, CA 94520 Physician's and Surgeon's Certificate No. G20175 Respondent.	Case No. 12-2009-197653 **ACCUSATION**

Complainant alleges:

PARTIES

1. Linda K. Whitney (Complainant) brings this Accusation solely in her official capacity as the Executive Director of the Medical Board of California, Department of Consumer Affairs.

2. On or about April 7, 1971, the Medical Board of California issued Physician's and Surgeon's Certificate Number G20175 to Stephen Barnett Lewis, M.D. (Respondent). At all times relevant to the charges brought herein this license has been in full force and effect. Unless renewed, the certificate will expire on March 31, 2014.

3. At all times relevant to the charges herein, Respondent worked in a private solo practice in Concord, California. Respondent's training is in internal medicine and in endocrinology.

JURISDICTION

4. This Accusation is brought before the Medical Board of California (Board), Department of Consumer Affairs, under the authority of the following laws. All section references are to the Business and Professions Code unless otherwise indicated.

5. Section 2004 of the Code states:

"The board shall have the responsibility for the following:

"(a) The enforcement of the disciplinary and criminal provisions of the Medical Practice Act.

"(b) The administration and hearing of disciplinary actions.

"(c) Carrying out disciplinary actions appropriate to findings made by a panel or an administrative law judge.

"(d) Suspending, revoking, or otherwise limiting certificates after the conclusion of disciplinary actions.

"(e) Reviewing the quality of medical practice carried out by physician and surgeon certificate holders under the jurisdiction of the board.

"(f) Approving undergraduate and graduate medical education programs.

"(g) Approving clinical clerkship and special programs and hospitals for the programs in subdivision (f).

"(h) Issuing licenses and certificates under the board's jurisdiction.

"(i) Administering the board's continuing medical education program."

6. Section 2227 of the Code provides that a licensee who is found guilty under the Medical Practice Act may have his or her license revoked, suspended for a period not to exceed one year, placed on probation and required to pay the costs of probation monitoring, or such other action taken in relation to discipline as the Board deems proper.

///

///

///

///

7. Section 2234 of the Code states:

"The Division of Medical Quality[1] shall take action against any licensee who is charged with unprofessional conduct. In addition to other provisions of this article, unprofessional conduct includes, but is not limited to, the following:

"(a) Violating or attempting to violate, directly or indirectly, assisting in or abetting the violation of, or conspiring to violate any provision of this chapter [Chapter 5, the Medical Practice Act].

"(b) Gross negligence.

"(c) Repeated negligent acts. To be repeated, there must be two or more negligent acts or omissions. An initial negligent act or omission followed by a separate and distinct departure from the applicable standard of care shall constitute repeated negligent acts.

"(1) An initial negligent diagnosis followed by an act or omission medically appropriate for that negligent diagnosis of the patient shall constitute a single negligent act.

"(2) When the standard of care requires a change in the diagnosis, act, or omission that constitutes the negligent act described in paragraph (1), including, but not limited to, a reevaluation of the diagnosis or a change in treatment, and the licensee's conduct departs from the applicable standard of care, each departure constitutes a separate and distinct breach of the standard of care.

"(d) Incompetence.

"(e) The commission of any act involving dishonesty or corruption which is substantially related to the qualifications, functions, or duties of a physician and surgeon.

"(f) Any action or conduct which would have warranted the denial of a certificate."

///

///

///

---

[1] The term "Board" means the Medical Board of California. "Division of Medical Quality" shall also be deemed to refer to the Board (Bus. & Prof. Code section 2002).

8. Section 2242 of the Code states:

"(a) Prescribing, dispensing, or furnishing dangerous drugs as defined in Section 4022 without an appropriate prior examination and a medical indication, constitutes unprofessional conduct.

"(b) No licensee shall be found to have committed unprofessional conduct within the meaning of this section if, at the time the drugs were prescribed, dispensed, or furnished, any of the following applies:

"(1) The licensee was a designated physician and surgeon or podiatrist serving in the absence of the patient's physician and surgeon or podiatrist, as the case may be, and if the drugs were prescribed, dispensed, or furnished only as necessary to maintain the patient until the return of his or her practitioner, but in any case no longer than 72 hours.

"(2) The licensee transmitted the order for the drugs to a registered nurse or to a licensed vocational nurse in an inpatient facility, and if both of the following conditions exist:

"(A) The practitioner had consulted with the registered nurse or licensed vocational nurse who had reviewed the patient's records.

"(B) The practitioner was designated as the practitioner to serve in the absence of the patient's physician and surgeon or podiatrist, as the case may be.

"(3) The licensee was a designated practitioner serving in the absence of the patient's physician and surgeon or podiatrist, as the case may be, and was in possession of or had utilized the patient's records and ordered the renewal of a medically indicated prescription for an amount not exceeding the original prescription in strength or amount or for more than one refill.

"(4) The licensee was acting in accordance with Section 120582 of the Health and Safety Code."

9. Section 2238 of the Code states:

"A violation of any federal statute or federal regulation or any of the statutes or regulations of this state regulating dangerous drugs or controlled substances constitutes unprofessional conduct."

///

10. Section 2239 of the Code states:

"(a) The use or prescribing for or administering to himself or herself, of any controlled substance; or the use of any of the dangerous drugs specified in Section 4022, or of alcoholic beverages, to the extent, or in such a manner as to be dangerous or injurious to the licensee, or to any other person or to the public, or to the extent that such use impairs the ability of the licensee to practice medicine safely or more than one misdemeanor or any felony involving the use, consumption, or self-administration of any of the substances referred to in this section, or any combination thereof, constitutes unprofessional conduct. The record of the conviction is conclusive evidence of such unprofessional conduct.

"(b) A plea or verdict of guilty or a conviction following a plea of nolo contendere is deemed to be a conviction within the meaning of this section. The Division of Medical Quality may order discipline of the licensee in accordance with Section 2227 or the Division of Licensing may order the denial of the license when the time for appeal has elapsed or the judgment of conviction has been affirmed on appeal or when an order granting probation is made suspending imposition of sentence, irrespective of a subsequent order under the provisions of Section 1203.4 of the Penal Code allowing such person to withdraw his or her plea of guilty and to enter a plea of not guilty, or setting aside the verdict of guilty, or dismissing the accusation, complaint, information, or indictment."

11. Section 2266 of the Code states: "The failure of a physician and surgeon to maintain adequate and accurate records relating to the provision of services to their patients constitutes unprofessional conduct."

12. Section 725 of the Code states:

"(a) Repeated acts of clearly excessive prescribing, furnishing, dispensing, or administering of drugs or treatment, repeated acts of clearly excessive use of diagnostic procedures, or repeated acts of clearly excessive use of diagnostic or treatment facilities as determined by the standard of the community of licensees is unprofessional conduct for a physician and surgeon, dentist, podiatrist, psychologist, physical therapist, chiropractor, optometrist, speech-language pathologist, or audiologist.

"(b) Any person who engages in repeated acts of clearly excessive prescribing or administering of drugs or treatment is guilty of a misdemeanor and shall be punished by a fine of not less than one hundred dollars ($100) nor more than six hundred dollars ($600), or by imprisonment for a term of not less than 60 days nor more than 180 days, or by both that fine and imprisonment.

"(c) A practitioner who has a medical basis for prescribing, furnishing, dispensing, or administering dangerous drugs or prescription controlled substances shall not be subject to disciplinary action or prosecution under this section.

"(d) No physician and surgeon shall be subject to disciplinary action pursuant to this section for treating intractable pain in compliance with Section 2241.5."

13. Section 1399.545(f) of Title 16 of the California Code of Regulations sets forth the requirements for supervision of a physician assistant as follows:

"(a) A supervising physician shall be available in person or by electronic communication at all times when the physician assistant is caring for patients.

(b) A supervising physician shall delegate to a physician assistant only those tasks and procedures consistent with the supervising physician's specialty or usual and customary practice and with the patient's health and condition.

(c) A supervising physician shall observe or review evidence of the physician assistant's performance of all tasks and procedures to be delegated to the physician assistant until assured of competency.

(d) The physician assistant and the supervising physician shall establish in writing transport and back-up procedures for the immediate care of patients who are in need of emergency care beyond the physician assistant's scope of practice for such times when a supervising physician is not on the premises.

(e) A physician assistant and his or her supervising physician shall establish in writing guidelines for the adequate supervision of the physician assistant which shall include one or more of the following mechanisms:

(1) Examination of the patient by a supervising physician the same day as care is given by the physician assistant;

(2) Countersignature and dating of all medical records written by the physician assistant within thirty (30) days that the care was given by the physician assistant;

(3) The supervising physician may adopt protocols to govern the performance of a physician assistant for some or all tasks. The minimum content for a protocol governing diagnosis and management as referred to in this section shall include the presence or absence of symptoms, signs, and other data necessary to establish a diagnosis or assessment, any appropriate tests or studies to order, drugs to recommend to the patient, and education to be given the patient. For protocols governing procedures, the protocol shall state the information to be given the patient, the nature of the consent to be obtained from the patient, the preparation and technique of the procedure, and the follow-up care. Protocols shall be developed by the physician, adopted from, or referenced to, tests or other sources. Protocols shall be signed and dated by the supervising physician and the physician assistant. The supervising physician shall review, countersign, and date a minimum of 5% sample of medical records of patients treated by the physician assistant functioning under these protocols within thirty (30) says. The physician shall select for review those cases which by diagnosis, problem, treatment or procedure represent, in his or her judgment, the most significant risk to the patient;

(4) Other mechanisms approved in advance by the committee.

(f) The supervising physician has continuing responsibility to follow the progress of the patient and to make sure that the physician assistant does not function autonomously. The supervising physician shall be responsible for all medical services provided by a physician assistant under his or her supervision."

PERTINENT DRUGS

14. **Adderall** is a trade name for amphetamine salts based medication that is indicated for attention deficit hyperactivity disorder and for narcolepsy. It is a Schedule II controlled substance as defined by section 11055 of the Health and Safety Code, and by Section 1308.12 of Title 21 of

the Code of Federal Regulations and is a dangerous drug as defined in section 4022. Amphetamine salts preparations are considered to have high abuse potential.

15. **Adipex-P** is a trade name for **phentermine hydrochloride** and is an obesity/weight reduction anorectic related to amphetamines. It is a Schedule IV controlled substance as defined by section 11057 of the Health and Safety Code, and by Section 1308.14 of Title 21 of the Code of Federal Regulations and is a dangerous drug as defined in section 4022.

16. **Ambien** is a trade name for zolpidem tartrate and is a non-benzodiazepine hypnotic of the imidasopyridine class. It is a Schedule IV controlled substance as defined by section 11057 of the Health and Safety Code, and by Section 1308.14 of Title 21 of the Code of Federal Regulations and is a dangerous drug as defined in section 4022. I t is indicated for the short-term treatment of insomnia. It is a central nervous system depressant and should be used cautiously in combination with other central nervous system depressants. Any central nervous system depressant could potentially enhance the CNS depressive effects of Ambien. It should be administered cautiously to patients exhibiting signs or symptoms of depression because of the risk of suicide. Because of the risk of habituation and dependence, individuals with a history of addiction to or abuse of drugs or alcohol should be carefully monitored while receiving Ambien.

17. **Ativan**, a trade name for **lorazepam**, is used for anxiety and sedation in the management of anxiety disorder for short-term relief from the symptoms of anxiety or anxiety associated with depressive symptoms. It is a Schedule IV controlled substance as defined by section 11057 of the Health and Safety Code, and a Schedule IV controlled substance as defined by Section 1308.14 of Title 21 of the Code of Federal Regulations, and a dangerous drug as defined in Business and Professions Code section 4022.

18. **Darvocet N100** is a trade name for the combination of **propoxyphene napsylate and acetaminophen**, a narcotic analgesic. It is a Schedule IV controlled substance as defined by section 11057 of the Health and Safety Code, and by Section 1308.14 of Title 21 of the Code of Federal Regulations, and is a dangerous drug as defined in Business and Professions Code section 4022.

19. **Dexedrine** is a trade name for **dextroamphetamine sulfate**, an amphetamine. It is a Schedule II controlled substance as defined by section 11055, subdivision (d) of the Health and Safety Code, and by Section 1308.12 (d) of Title 21 of the Code of Federal Regulations and is a dangerous drug as defined in section 4022.

20. **Dilaudid** is a trade name for **hydromorphone hydrochloride**. It is a Schedule II controlled substance as defined by section 11055, subdivision (d) of the Health and Safety Code, and a Schedule II controlled substance as defined by Section 1308.12 (d) of Title 21 of the Code of Federal Regulations, and a dangerous drug as defined in Business and Professions Code section 4022. Dilaudid is a hydrogenated ketone of morphine and is a narcotic analgesic. Its principal therapeutic use is relief of pain. Psychic dependence, physical dependence, and tolerance may develop upon repeated administration of narcotics; therefore, Dilaudid should be prescribed and administered with caution. Patients receiving other narcotic analgesics, anesthetics, phenothiazines, tranquilizers, sedative-hypnotics, tricyclic antidepressants and other central nervous system depressants, including alcohol, may exhibit an additive central nervous system depression. When such combined therapy is contemplated, the use of one or both agents should be reduced.

21. **Fiorinal** is a trade name for an analgesic containing 30 mg. of codeine phosphate as well as 50 mg. of butalbital, a barbiturate, caffeine, and aspirin. It is a Schedule III controlled substance and narcotic as defined by section 11056, subdivision (e) of the Health and Safety Code, and by section 1308.13 (e) of Title 21 of the Code of Federal Regulations and is a dangerous drug as defined in section 4022.

22. **Lortab** is a trade name for medication containing **hydrocodone bitartrate**, a semisynthetic narcotic analgesic, a dangerous drug as defined in section 4022, a Schedule III controlled substance and narcotic as defined by section 11056 of the Health and Safety Code, and by section 1308.13 of Title 21 of the Code of Federal Regulations. Repeated administration over a course of several weeks may result in psychic and physical dependence.

23. **MS Contin** is a trade name for **morphine sulfate** controlled release tablets. MS Contin 30 mg tablets contain 30 mg. morphine sulfate. 40. Morphine sulfate is for use in patients

who require a potent opioid analgesic for relief of moderate to severe pain. Morphine is a Schedule II controlled substance and narcotic as defined by section 11055, subdivision (b)(1) of the Health and Safety Code, and by Section 1308.12 (b)(1) of Title 21 of the Code of Federal Regulations and is a dangerous drug as defined in section 4022. Morphine can produce drug dependence and has a potential for being abused.

24. **Norco** and **Vicodin** are trade names for **hydrocodone bitartrate with acetaminophen**. Hydrocodone Bitartrate is semisynthetic narcotic analgesic. It is a Schedule III controlled substance and narcotic as defined by section 11056, subdivision (e) of the Health and Safety Code, and a Schedule III controlled substance as defined by section 1308.13 (e) of Title 21 of the Code of Federal Regulations, and a dangerous drug as defined in Business and Professions Code section 4022.

25. **OxyContin** is a trade name for **oxycodone hydrochloride** controlled-release tablets. Oxycodone is a white odorless crystalline powder derived from an opium alkaloid. It is a pure agonist opioid whose principal therapeutic action is analgesia. Other therapeutic effects of oxycodone include anxiolysis, euphoria, and feelings of relaxation. OxyContin is a Schedule II controlled substance and narcotic as defined by section 11055, subdivision (b)(1) of the Health and Safety Code, and a Schedule II controlled substance as defined by Section 1308.12 (b)(1) of Title 21 of the Code of Federal Regulations, and a dangerous drug as defined in Business and Professions Code section 4022. Respiratory depression is the chief hazard from all opioid agonist preparations. OxyContin should be used with caution and started in a reduced dosage (1/3 to 1/2 of the usual dosage) in patients who are concurrently receiving other central nervous system depressants including sedatives or hypnotics, general anesthetics, phenothiazines, other tranquilizers, and alcohol.

26. **Percocet**, a trade name for a combination of **oxycodone hydrochloride and acetaminophen**, is a semisynthetic narcotic analgesic with multiple actions qualitatively similar to those of morphine. It is a Schedule II controlled substance and narcotic as defined by section 11055, subdivision (b)(1)(N), of the Health and Safety Code, and a Schedule II controlled substance as defined by Section 1308.12 (b)(1) of Title 21 of the Code of Federal Regulations,

and a dangerous drug as defined in Business and Professions Code section 4022. Percocet can produce drug dependence of the morphine type and, therefore, has the potential for being abused. Percocet contains 5 mg of oxycodone hydrochloride and 350 mg of acetaminophen. Repeated administration of Percocet may result in psychic and physical dependence.

27. **Percodan**, a trade name for a combination of oxycodone hydrochloride, oxycodone trephthalate, and aspirin, is a semisynthetic narcotic analgesic with multiple actions qualitatively similar to those of morphine. It is a Schedule II controlled substance and narcotic as defined by section 11055, subdivision (b)(1)(N) of the Health and Safety Code, and by Section 1308.12 (b)(1) of Title 21 of the Code of Federal Regulations and is a dangerous drug as defined in section 4022. Oxycodone can produce drug dependence of the morphine type and, therefore, has the potential for being abused. Repeated administration of Percodan may result in psychic and physical dependence.

28. **Roxanol** is a trade name for **morphine sulfate** and is indicated for the relief of severe acute and severe chronic pain. It is a Schedule II controlled substance as defined in Health and Safety Code section 11055, subdivision (b)(1)(M) and is a dangerous drug as defined in section 4022. Roxanol should be used with caution and in reduced dosage in patients who are concurrently receiving other narcotic analgesics, general anesthetics, phenothiazines, other tranquilizers, sedative-hypnotics, tricyclic antidepressants, and other CNS depressants (including alcohol). Respiratory depression, hypotension, and profound sedation or coma may result.

29. **Roxicet** is a trade name for a combination of **oxycodone hydrochloride and acetaminophen**, a semisynthetic narcotic analgesic with multiple actions qualitatively similar to those of morphine. It is a Schedule II controlled substance and narcotic as defined by section 11055, subdivision (b)(1), of the Health and Safety Code, and a Schedule II controlled substance as defined by Section 1308.12 (b)(1) of Title 21 of the Code of Federal Regulations, and a dangerous drug as defined in Business and Professions Code section 4022. Roxicet can produce drug dependence of the morphine type and, therefore, has the potential for being abused.

30. **Roxicodone** is a trade name for **oxycodone hydrochloride** and is a semisynthetic narcotic analgesic with multiple actions qualitatively similar to those of morphine. It is a

Schedule II controlled substance and narcotic as defined by section 11055, subdivision (b)(1) of the Health and Safety Code, and by Section 1308.12(b)(1) of Title 21 of the Code of Federal Regulations and is a dangerous drug as defined in section 4022. Roxicodone can produce drug dependence of the morphine type and, therefore, has the potential for being abused.

31. **Talwin** is a trade name for the combination of pentazocine hydrochloride and aspirin. It is a Schedule IV controlled substance as defined by section 11057(g)(1) of the Health and Safety Code and is a dangerous drug as defined in section 4022.

32. **Testosterone cypionate injection, USP** is indicated for replacement therapy in the male for conditions associated with symptoms of deficiency or absence of endogenous testosterone. It is a Schedule II controlled substance as defined by section 11056 of the Health and Safety Code and under the Anabolic Steroid Control Act.

33. **Valium** is a trade name for **diazepam**, a psychotropic drug used for the management of anxiety disorders or for the short-term relief of the symptoms of anxiety. It is a Schedule IV controlled substance as defined by section 11057 of the Health and Safety Code, and a Schedule IV controlled substance as defined by Section 1308.14 of Title 21 of the Code of Federal Regulations, and a dangerous drug as defined in Business and Professions Code section 4022. Diazepam can produce psychological and physical dependence and it should be prescribed with caution particularly to addiction-prone individuals (such as drug addicts and alcoholics) because of the predisposition of such patients to habituation and dependence.

34. **Xanax** is a trade name for **alprazolam** tablets. Alprazolam is a psychotropic triazolo analogue of the benzodiazepine class of central nervous system-active compounds. Xanax is used for the management of anxiety disorders or for the short-term relief of the symptoms of anxiety. It is a Schedule IV controlled substance and narcotic as defined by section 11057, subdivision (d) of the Health and Safety Code, and a Schedule IV controlled substance as defined by Section 1308.14 (c) of Title 21 of the Code of Federal Regulations, and a dangerous drug as defined in Business and Professions Code section 4022. Xanax has a central nervous system depressant effect and patients should be cautioned about the simultaneous ingestion of alcohol and other CNS depressant drugs during treatment with Xanax.

FIRST CAUSE FOR DISCIPLINE

(Unprofessional Conduct re Patient JB: Gross Negligence/Incompetence/Prescribing without an appropriate prior examination)

35. Respondent is subject to disciplinary action for unprofessional conduct under sections 2234(b) and/or 2234(d) and/or 2242 in that Respondent's overall conduct, acts and/or omissions, with regard to patient JB constitutes gross negligence and/or incompetence and/or prescribing without an appropriate prior examination and a medical indication, as more fully described herein below.

36. On or about April 25, 1997, Respondent assumed primary care of Patient JB, a then morbidly obese 18 year-old male. Respondent did not perform a full physical examination of the patient. Respondent did not obtain a patient history regarding prior pain treatment and chronic pain. Respondent's assessment of patient JB in April 1997 was morbid obesity, acanthosis nigricans, hyperinsulinemia, and impaired glucose tolerance.

37. From April 1997 to November 2010, Respondent saw patient JB about 79 times for visits. Respondent's records, however, are cursory and the vast majority of visits have no physician documentation.

38. Starting in or about May 1997, Respondent prescribed Talwin to patient JB and Respondent routinely prescribed opiates thereafter until 2011.

39. In his more than 13 years of treatment of patient JB, Respondent has no documentation of findings to support a diagnosis of a pain-related condition or of any indication for the use of opioid analgesics. Respondent never documented the level of pain or the level of function for patient JB in any of the visits. Yet, Respondent increased the dosing of opiates to patient JB and multiple different opiates were used over time: Vicodin, Norco, Percocet, Roxanol, Dilaudid, Talwin, Darvocet.

40. There is no clear documentation of the presence of a recognized medical indication for the use of opiates for chronic pain, other than a single entry that mentions osteoarthritis of the back and knees without identifying severity, evaluation, prior treatments. Respondent does not indicate in the patient's chart the condition for which the pain medications were being prescribed.

41. Respondent never documented in his records a treatment plan or objectives for the opiate medications prescribed to patient JB.

42. In or about 2008, Respondent prescribed three short-acting opiates at the same time, without documenting a medical indication.

43. From about July 31, 2008 through about December 30, 2008, Respondent prescribed to patient JB the following three short-acting opioids: #2220 tablets of Norco 10/325, #240 tablets Percocet 5/325, and #1060 tablets of Darvocet 100/650, which averages to about 8.1 grams per day of acetaminophen. This prescribing provided for extremely high levels of acetaminophen that exceeded the FDA established guidelines of four grams per day by double or triple that amount. Respondent has no documented medical indication for this prescribing and failed to conduct any periodic review.

44. In or about January 2009, Respondent added Dilaudid to the prescribed medications for patient JB without any indication in the medical record as to the medical reason for adding this very strong opioid medication to the patient's treatment regimen. Although the prescriptions directed the patient to take 4 to 8 pills per day, Respondent's issuance of the prescriptions allowed the patient to take up to 80 tablets a day.

45. Respondent prescribed the stimulant Phentermine to patient JB, apparently for weight management, starting in 1997.

46. Respondent's records indicate in or about 2008 that patient JB was prescribed, at the same time, Adderall and Dexedrine, which are both potent stimulant controlled substances.

47. Although it is not in his records, Respondent states that the Adderall was prescribed for treatment of Attention Deficit Disorder (ADD) and the Dexedrine was for treatment of narcolepsy.

48. There is no documentation in Respondent's records to establish a diagnosis of ADD , who made this diagnosis or how it was made, and there are no objective findings documented in Respondent's records to support this diagnosis.

49. There is no documentation in Respondent's records to establish a diagnosis of narcolepsy, and no indication about who made the diagnosis, how it was made, and there are no objective findings documented in Respondent's records to support this diagnosis.

50. Respondent never documented the patient's response to the stimulants he prescribed.

51. Respondent never documented in his records a treatment plan or objectives for the stimulant medications prescribed to patient JB.

52. In or about 2008, Respondent prescribed both Valium and Xanax to patient JB without any medical indication documented in the patient's records.

53. Respondent's records for patient JB do not contain any imaging studies of the patient's back or knees, no sleep studies, or consultant reports from pain management or other specialists.

54. Respondent's records for patient JB do not document the medications prescribed by Respondent at each visit and contain no indication of the patient's current medication regimen.

55. Respondent permitted his physician assistant to write multiple prescriptions for controlled substances to patient JB. None of the physician assistant's notes written from 2008 on were signed and dated within 7 days by Respondent, her supervising physician, as required by Section 1399.545(f) of Title 16, California Code of Regulations.

56. During his interview with the Medical Board on February 16, 2011, Respondent stated that he became suspicious of patient JB's opiate use around October 2010. Respondent, however, did not document this concern in his records.

57. Although Respondent claimed to have discharged patient JB from his practice in or about November 2010, Respondent continued to prescribe Adderall to patient JB until at least December 7, 2010, and continued to prescribed opiates and Dexedrine to patient JB up to at least January 6, 2011.

58. Respondent's overall conduct, acts and/or omissions, with regard to patient JB, as set forth in paragraphs 35 through 57 herein, constitutes unprofessional conduct through gross negligence and/or incompetence and/or prescribing without an appropriate prior examination and a medical indication, pursuant to Business and Professions Code Sections 2234 subdivisions (b)

and/or (d) and/or section 2242, and is therefore subject to disciplinary action. More specifically, Respondent is guilty of unprofessional conduct with regard to patient JB, jointly and severally, as follows:

a. Respondent did not conduct an appropriate evaluation of the conditions for which he was treating patient JB. Respondent's records do not contain one notation of any pain complaint by patient JB, do not document a physical examination with respect to any pain complaints, and do not document any indication of the patient's pain levels or response to treatment. Respondent failed to document, for over thirteen years of treatment, findings to support a diagnosis of a pain-related condition and/or any medical indication for the prescribing of opioid analgesics, which by itself constitutes an extreme departure from the standard of care.

b. Respondent prescribed and changed the dosing of the opiates and stimulants over thirteen years without documenting a treatment plan and objectives for pain management, and without plans for diagnostic evaluations, which by itself constitutes an extreme departure from the standard of care.

c. Respondent prescribed excessive amounts of acetaminophen to patient JB over a prolonged period of time, without adequate monitoring, which by itself constitutes an extreme departure from the standard of care.

d. Respondent diagnosed narcolepsy in patient JB without an appropriate evaluation and documented objective findings. Respondent prescribed controlled amphetamine medications to the patient over many years for treatment of narcolepsy, which the patient most likely did not have. This by itself constitutes an extreme departure from the standard of care.

e. Respondent did not seek consultations with other physicians for pain management, for psychiatric management of ADD, and did not seek consultation with a sleep specialist for the diagnosis and/or management of narcolepsy or obstructive sleep apnea – all conditions for which Respondent prescribed controlled substances to patient JB.

f. For the vast majority of patient visits, Respondent's records had no physician documentation. Respondent's records are cursory and are often illegible. Respondent failed to document findings that are standard guidelines when prescribing controlled substances. There

was no documentation of physical examinations, notations of other evaluations, studies, or consultations, treatment plans, or periodic reviews.

g. Respondent prescribed to patient JB two different amphetamine combination medications (Adderall and Dexedrine) at the same time, thereby exposing the patient to large doses of amphetamines despite the patient's known risks for complications, e.g. diabetes, metabolic syndrome.

h. Respondent failed to obtain informed consent from the patient for the used of high doses of multiple opioid medications over the course of many years.

i. Respondent failed to periodically review the course of pain management treatment for patient JB.

j. Respondent failed to co-sign the notes for patient JB that were written by his physician assistant, starting from as early as 2008.

SECOND CAUSE FOR DISCIPLINE

(Unprofessional Conduct re Patient SR: Gross Negligence/Incompetence/Prescribing without an appropriate prior examination)

59. Respondent is subject to disciplinary action for unprofessional conduct under sections 2234(b) and/or 2234(d) and/or 2242 in that Respondent's overall conduct, acts and/or omissions, with regard to patient SR constitutes gross negligence and/or incompetence and/or prescribing without an appropriate prior examination and a medical indication, as more fully described herein below.

60. On or about October 26, 1998, patient SR first saw Respondent. Other than the patient's initial questionnaire, Respondent did not document an appropriate medical history or a physical examination, function history, substance abuse history, and failed to document the medical indications for the drugs prescribed.

61. From October 26, 1998 until about May 2007, Respondent did not document treatment plans or objectives for the prescribing of opiates and/or amphetamine agents to patient

SR. Records obtained by the Medical Board indicate that Respondent prescribed Vicodin, Ambien and Levoxyl to patient SR.

62. From about June 2007 through about December 2007, Respondent prescribed #2650 5 mg tablets of Hydrocodone/APAP 5/500 to patient SR.

63. From about January 2008 through July 8, 2008, Respondent prescribed #1200 10 mg tablets of Hydrocodone/APAP 10/325 and #1860 5 mg tablets of Hydrocodone/APAP 5/500.

64. Respondent's records for the care and treatment of patient SR are sparse and do not include appropriate history, exam, treatment plans, assessments of function or pain levels. Between October 26, 1998 through 2010, Respondent diagnosed, with minimal documentation, that patient SR had the following conditions: type 2 diabetes, coronary heart disease with history of bypass graft surgery in 2006, congestive heart failure, depression, anxiety, sleep apnea, hypothyroidism, asthma, tobacco abuse, anemia, pneumonia, hip fracture with history of total hip replacement, gastritis, diverticulosis, diabetic neuropathy, and chronic low back pain.

65. From 1998 until May 2007, Respondent personally saw patient SR. After May 2007, all of patient SR's visits were with Respondent's physician assistant.

66. From 1998 until May 2007, Respondent did not document at any visit, patient SR's pain or functional status.

67. Respondent prescribed opiates and amphetamines over several years up until May 2007 without documenting an appropriate history, examination, or a medical indication for the prescription drugs.

68. From June 5, 2007 through July 8, 2008, Respondent prescribed a daily average of over 6 grams of acetaminophen for patient SR.

69. Respondent's overall conduct, acts and/or omissions, with regard to patient SR, as set forth in paragraphs 59 through 68 herein, constitutes unprofessional conduct through gross negligence and/or incompetence and/or prescribing without an appropriate prior examination and a medical indication, pursuant to Business and Professions Code Sections 2234 subdivisions (b) and/or (d) and/or section 2242, and is therefore subject to disciplinary action. More specifically,

Respondent is guilty of unprofessional conduct with regard to patient SR, jointly and severally, as follows:

a. From at least June 2007 through about July 2008, Respondent routinely prescribed to patient SR acetaminophen in excess of 4 grams per day, which in itself constitutes extreme departures from the standard of care. Respondent was aware that he was treating the patient contrary to the FDA guidelines of no more than four grams per day of acetaminophen and he chose to do so anyway.

b. Respondent failed to appropriately document patient SR's care, including records regarding the prescribing and use of opiates and stimulants. Respondent did not appropriately document treatment plans or objectives of treatment while he was prescribing opiates and stimulant medications to patient SR. Respondent also failed to document patient SR's pain or functional status.

c. Respondent failed to co-sign the notes for patient SR that were written by his physician assistant starting from as early as 2007, which include multiple prescriptions for controlled substances.

d. Respondent failed to assess therapy, failure to perform periodic reviews, failed to assess the progress and/or the possible side effects the patient was experiencing, and failed to document any treatment plan.

e. Respondent failed to obtain informed consent from patient SR regarding the risks and benefits of the use of controlled substances.

THIRD CAUSE FOR DISCIPLINE

(Unprofessional Conduct re Patient RO: Gross Negligence/Incompetence/ Prescribing without an appropriate prior examination)

70. Respondent is subject to disciplinary action for unprofessional conduct under sections 2234(b) and/or 2234(d) and/or 2242 in that Respondent's overall conduct, acts and/or omissions, with regard to patient RO constitutes gross negligence and/or incompetence and/or prescribing

without an appropriate prior examination and a medical indication, as more fully described herein below.

71. Patient RO first saw Respondent on February 4, 1994. Respondent has no progress note documented for that initial visit. While not evident in Respondent's office notes, consultations reports of other physicians reveal that patient RO had a history of alcohol dependence but stopped drinking in 2003, had a benign pancreatic tumor removed by surgery in 2003, had hypertension, macrocytic anemia, rectal prolapse, herpes simplex, genital warts, and chronic hyponatremia. The patient had multiple pain complaints involving the left shoulder, neck, and low back pain after being shoved into furniture nearly 20 years ago. She was treated with opioid analgesics for pain and benzodiazepines and antidepressants for anxiety and post-traumatic stress disorder.

72. Respondent consistently prescribed opiates and benzodiazepines to patient RO over many years without documenting a history relating to the pain or anxiety problems, without documenting a physical examination, without referring to the patient's known alcohol abuse problem. Respondent did not document the presence of a recognized indication for these controlled substances.

73. Respondent did not perform any independent evaluations of patient RO. Over the years of treatment, there is only one notation of "anxiety" in Respondent's progress notes for patient RO and that notation in October 2004 was written by a nurse practitioner.

74. During his interview with the Medical Board on February 16, 2011, Respondent stated that patient RO had hemorrhagic pancreatitis and chronic pancreatitis and that she was under the care of another physician. Respondent, however, has no documentation of this information in his records.

75. Respondent's records for patient RO do not include any discussion or assessment of the status of her pain or of her anxiety in relation to the treatment. There is also no documentation about further evaluations or treatments.

76. Although Respondent's records include evaluations done by an addiction specialist, physical therapists, chiropractors, and pain specialists, Respondent's note do not indicate any

acknowledgement of these outside evaluations and/or how they affect Respondent's treatment plan for patient RO. For example, Respondent's notes do not mention or allude to an evaluation of chemical dependency dated September 19, 2006 which stated that patient RO declined the recommendation to discontinue use of Vicodin and benzodiazepines.

77. During his interview with the Medical Board on February 16, 2011, Respondent stated that patient RO told him that she would commit suicide if she did not continue with pain management (i.e. opiates.) There is no documentation in Respondent's records of this information.

78. For many months in 2006, Respondent routinely prescribed monthly for patient RO 180 tablets of Darvocet N100 and 120 tablets of Lortab 7.5/500 which, if taken regularly over a 30-day period would be 5.9 grams per day of acetaminophen, which exceeds a maximum dose of 4 grams of acetaminophen in a 24-hour period.

79. During his interview with the Medical Board on February 16, 2011, Respondent stated that he dosed up to 12 grams per day of acetaminophen for pain control, which he felt was safe for patient RO because of malabsorption due to chronic pancreatitis. Respondent's records, however, do not confirm a diagnosis of chronic pancreatitis, nor does the patient have confirmed symptoms of pancreatic malabsorption.

80. During his interview with the Medical Board on February 16, 2011, Respondent stated that he was regularly monitoring patient RO's liver function. Respondent's records, however, include lab results of liver function tests done only six times over the course of twelve years, 1997 to 2009.

81. Respondent's overall conduct, acts and/or omissions, with regard to patient RO, as set forth in paragraphs 70 through 80 herein, constitutes unprofessional conduct through gross negligence and/or incompetence and/or prescribing without an appropriate prior examination and a medical indication, pursuant to Business and Professions Code Sections 2234 subdivisions (b) and/or (d) and/or section 2242, and is therefore subject to disciplinary action. More specifically, Respondent is guilty of unprofessional conduct with regard to patient RO, jointly and severally, as follows:

a. Respondent routinely prescribed acetaminophen in excess of 4 grams per day to patient RO, which by itself constitutes an extreme departure from the standard of care.

b. Respondent failed to appropriately evaluate the patient and failed to perform and adequate examination prior to prescribing controlled substances. There is no adequate history and physical examination, there is no indication of any pain complaints, no history of any pain treatment or workup, no evaluation of psychological status, and no physical exam other than the patient's height, weight, blood pressure, and pulse rate.

c. Respondent failed to document the presence of a recognized medical indication for opiate and benzodiazepine therapy.

d. Respondent did not appropriately document treatment plans or objectives of treatment with regards to patient RO's chronic pain and/or her anxiety.

e. Respondent failed to assess the therapy and failed to do periodic reviews of treatment. Respondent failed to document pain, anxiety, functional status, and the results of consultative interventions.

f. Respondent failed to obtain informed consent from patient RO who has a history of alcohol dependence and was at high risk for developing prescription medication substance abuse and was at risk for liver damage secondary to acetaminophen intake.

g. Respondent failed to adequately and appropriately manage patient RO's pain with opioid medications.

FOURTH CAUSE FOR DISCIPLINE

(Unprofessional Conduct re Patient CK: Repeated Negligent Acts/ Prescribing without an appropriate prior examination)

82. Respondent is subject to disciplinary action for unprofessional conduct under sections 2234(c) and/or 2242 in that Respondent's overall conduct, acts and/or omissions, with regard to patient CK constitutes repeated negligent acts and/or prescribing without an appropriate prior examination and a medical indication, as more fully described herein below.

83. Patient CK first saw Respondent on or about January 8, 2004. From about January 2004 through at least May 26, 2009, Patient CK was seen approximately thirty-four times at Respondent's clinic. Only about ten of those thirty-five visit notes in Respondent's records contain any sort of legible physician or physician assistant documentation of the patient's visit.

84. Respondent's records do not contain an appropriate documentation of an initial evaluation, medical history, and physical examination of patient CK. Respondent's original history and physical consists of a photograph and two handwritten lines that state "right lower leg and left LBP. January 12, 2004."

85. Based on a review of Respondent's records for patient CK, which includes primarily notes from outside consultants, patient CK had type 2 diabetes mellitus that was diet-controlled, a history of recurrent syncope with extensive normal workup, polyneuropathy of unclear etiology, hypothyroidism, dyslipidenia, vitamin D deficiency, chronic migraine type headaches, osteoarthritis of the knees. There were also mentions in the records of spondylosis of the spine (all areas), lumbar and cervical spinal stenosis, melanoma, fibromyalgia, depression, irritable bowel syndrome, a history of rheumatic fever, and chronic tachycardia.

86. Between about January 12, 2004 and April 10, 2007, patient CK saw Respondent approximately 17 times for which there are essentially no physician notes, with no documented history, exam, test results, or assessment. During this time, Respondent regularly prescribed to patient CK: butalbital, butalbital with codeine, alprazolam, and MS Contin, without documenting the presence of a recognized medical indication for the use of these controlled substances.

87. Respondent prescribed multiple medications to patient CK including Oxycontin, Roxicodone, Ambien, Fiorinal, and MS Contin.

88. Starting in about August 2007, Respondent began prescribing Oxycodone ER to patient RO for pain, without documenting the presence of a recognized medication indication.

89. Respondent's overall conduct, acts and/or omissions, with regard to patient CK, as set forth in paragraphs 82 through 88 herein, constitutes unprofessional conduct through repeated negligent acts and/or prescribing without an appropriate prior examination and a medical indication, pursuant to Business and Professions Code Sections 2234 subdivision (c) and/or

section 2242, and is therefore subject to disciplinary action. More specifically, Respondent is guilty of unprofessional conduct with regard to patient CK, jointly and severally, as follows:

a. Respondent failed, in his initial evaluation of patient CK, to obtain a medical history and failed to perform a physical examination of patient CK, including an assessment of the patient's pain, physical and psychological status and function, substance abuse history, history of prior pain treatments, and assessment of any other underlying or co-existing conditions.

b. Respondent failed to document a treatment plan or objectives for patient CK as relates to his opiate, barbiturate, and benzodiazepine prescribing, with the exception of the last available note dated 5/26/2009. Respondent did not document pain scores, functional status, or determine the status of the patient's headaches and did not document the patient's response to the treatment. Respondent failed to document any assessment of pain or functional status of patient CK.

FIFTH CAUSE FOR DISCIPLINE

(Unprofessional Conduct re Patients JB, RO, SR and/or CK: Repeated Negligent Acts)

90. Paragraphs 35 through 89 are incorporated herein by reference as if fully set forth. In the alternative, Respondent is subject to disciplinary action for unprofessional conduct under section 2234(c) in that Respondent's overall conduct, acts and/or omissions, with regard to patients JB, RO, SR, and/or CK constitutes repeated negligent acts.

SIXTH CAUSE FOR DISCIPLINE

(Unprofessional Conduct: Failure to Maintain Appropriate Records)

91. Respondent is subject to disciplinary action under section 2266 for failure to maintain adequate and accurate records. Paragraphs 35 through 89 are incorporated herein by reference as if fully set forth. For each of the four patient charts, Respondent's documentation was inadequate and mostly illegible. Most of Respondent's notes of office visits lacked any documentation of a history of present illness and did not document the status of chronic conditions. It was unclear what prescription drugs the patients were taking at any given time and for what established

condition they were prescribed. Respondent rarely documented a physical examination. There were no examinations documented of painful areas in these patients being treated for chronic pain. Most patient visits did not include a diagnostic impression. Respondent did not conduct and document periodic reviews of his treatment and the patient's response to the medications prescribed.

SEVENTH CAUSE FOR DISCIPLINE

(Unprofessional Conduct: Self-prescribing controlled substances)

92. Respondent is subject to disciplinary action for unprofessional conduct under sections 2234 and 2239 for the self-prescribing of controlled substances as detailed herein below.

93. In April 2009 and in July 2009, Respondent prescribed for himself testosterone cypionate oil for injection.

94. Respondent's prescribing a controlled substance to himself on two separate occasions constitutes two extreme departures from the standard of care.

PRAYER

WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged, and that following the hearing, the Medical Board of California issue a decision:

1. Revoking or suspending Physician's and Surgeon's Certificate Number G20175, issued to Stephen Barnett Lewis, M.D..

2. Revoking, suspending or denying approval of Stephen Barnett Lewis, M.D.'s authority to supervise physician assistants, pursuant to section 3527 of the Code;

3 Ordering Stephen Barnett Lewis, M.D., if placed on probation, to pay the Medical Board of California the costs of probation monitoring; and/or

4 Taking such other and further action as deemed necessary and proper.

DATED: January 9, 2012

LINDA K. WHITNEY
Executive Director
Medical Board of California
Department of Consumer Affairs
State of California
Complainant